

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Ameren Illinois Company  
d/b/a Ameren Illinois

Proposed general increase in  
Gas rates

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Docket No. 13-0192

**THE ILLINOIS COMPETITIVE ENERGY ASSOCIATION  
AND THE RETAIL ENERGY SUPPLY ASSOCIATION  
REPLY TO BRIEFS ON EXCEPTIONS**

**I. INTRODUCTION**

Pursuant to 83 Ill. Admin. Code Section 200.830 and the schedule established by the Administrative Law Judge (“ALJ”), the Illinois Competitive Energy Association (“ICEA”)<sup>1</sup> and the Retail Energy Supply Association (“RESA”)<sup>2</sup> submit their Reply to Briefs on Exception in this proceeding. The following other parties submitted Briefs on Exceptions to the ALJ’s Proposed Order (“ALJPO”), addressing a Small Volume Transportation Program (“SVT Program” or “Choice Program”), the only issue addressed

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<sup>1</sup> ICEA’s members include Champion Energy, LLC; Constellation NewEnergy Inc.; Direct Energy Services, LLC; FirstEnergy Solutions Corp.; Homefield Energy; Integrys Energy Services, Inc.; MC2 Energy Services, LLC; Nordic Energy Services, LLC; NRG Retail; and Verde Energy USA Illinois, LLC. The views expressed in this filing represent the position of ICEA as an organization but may not represent the views of any particular member of ICEA.

<sup>2</sup> RESA’s members include AEP Energy, Inc.; Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd.; and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

by ICEA and RESA in their Brief on Exceptions: Ameren Illinois Company (“AIC” or “Ameren”), the Citizens Utility Board (“CUB”), the Illinois Commerce Commission (“Commission”) Staff (“Staff”), and the Retail Gas Suppliers (“RGS”). For the reasons stated in ICEA/RESA’s Brief on Exceptions and this Reply to Briefs on Exceptions, the Commission should adopt the ALJPO’s approval of Ameren’s SVT Program, but accept the revisions to the ALJPO proposed by ICEA and RESA in their Brief on Exceptions and this Reply to Briefs on Exceptions, including the establishment of an appropriate framework for the filing of specific tariff provisions for the SVT Program and the subsequent tariff proceeding. The Commission should support the ALJPO’s rejection of CUB’s proposal to add consumer protections beyond the extensive protections contained in Section 19-115 of the Public Utilities Act.

## **II. RESPONSE TO THE RETAIL GAS SUPPLIERS**

Like ICEA and RESA (ICEA/RESA BOE, pp. 1-2), RGS supports the ALJPO’s approval of the Ameren SVT Program. (RGS BOE, p. 1) RGS requests two modifications to the ALJPO.

First, like ICEA and RESA (ICEA/RESA BOE, pp. 3-4), RGS proposes to modify the ALJPO to add language regarding the framework of the SVT tariff proceeding. (RGS BOE, pp. 1-3, 5) ICEA and RESA agree in concept with RGS on this issue and believe that the language that ICEA and RESA proposed on pages 3-4 of their Brief on Exceptions should be modified to include RGS’ language regarding the workshop to take place before the filing of the SVT tariffs, as well as Ameren’s suggestion in its Brief on Exceptions (discussed below) that that workshop should be limited to issues not resolved

in the Order in this proceeding. Thus, ICEA and RESA propose the following revised replacement language to that offered in their Brief on Exceptions:<sup>3</sup>

First, revise the first paragraph on page 241 of the ALJPO to add the following sentences:

Specifically, AIC shall file SVT Program tariffs no later than 45 days after the date of this Order. AIC shall hold at least one workshop with interested parties prior to the filing of its SVT tariffs in order to resolve issues related to the proposed tariffs that have not been resolved by this Order. The Commission expects the parties to propose an expedited schedule in the resulting proceeding that allows a final order to be issued within 150 days after the filing so that the SVT Program can begin in the fourth quarter of 2014.

Second, a new Finding (13) should be added to page 243 of the ALJPO (and current Finding (13) renumbered to be Finding (14)), to read:

(13) AIC shall file SVT Program tariffs no later than 45 days after the date of this Order; AIC shall hold at least one workshop with interested parties prior to the filing of its SVT tariffs in order to resolve issues related to the proposed tariffs that have not been resolved by this Order; the Commission expects the parties to adopt an expedited schedule in the resulting proceeding that allows a final order to be issued within 150 days after the filing so that the SVT Program can begin in the fourth quarter of 2014;<sup>4</sup>

Second, similar to ICEA and RESA (ICEA/RESA BOE, pp. 4-5), RGS disagrees with the ALJPO's acceptance of CUB's proposed reporting requirements. (RGS BOE, pp. 3-6) However, while ICEA and RESA recommend that the ALJPO be revised to reject CUB's proposed data collection and reporting requirements (ICEA/RESA, pp. 4-5), RGS recommends that the ALJPO be modified to limit the data to be collected to the number of customers who have switched to alternative suppliers under the SVT Program and the number and nature of complaints to the Commission regarding each supplier.

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<sup>3</sup> The additional revised language is red-lined.

<sup>4</sup> ICEA/RESA's proposed change, in their Brief on Exceptions, to the Ordering Paragraphs does not need to be revised.

(RGS BOE, p. 6) While ICEA and RESA continue to believe that CUB's proposed reporting requirements should be eliminated from the ALJPO for the reasons cited in their Brief on Exceptions, if the Commission determines that there should be data collection and reporting requirements, they should be limited in the manner specified by RGS.

### **III. RESPONSE TO AMEREN ILLINOIS COMPANY**

Like ICEA and RESA, Ameren supports the ALJPO's approval of the Ameren SVT Program. Ameren requests four modifications to the ALJPO.

First, Ameren seeks clarification that the ALJPO approves its SVT Program, but that implementation follows the completion of the subsequent SVT tariff proceeding. (AIC BOE, p. 30-31) ICEA and RESA believe that this is the intent of the ALJPO, but agree with Ameren's proposal to clarify this matter.

Second, like ICEA and RESA, Ameren proposes to modify the ALJPO to add language regarding the framework of the SVT tariff proceeding. (AIC BOE, pp. 31-33) ICEA and RESA agree, in concept with Ameren on this issue, and have included in their revised replacement language in Section II, *supra*, Ameren's recommendation that the workshop to be held prior to the filing of SVT tariffs should be limited to matters not resolved by the Commission's Order. ICEA and RESA agree with Ameren that in order to ensure that a final order is issued within 150 days from the filing of the SVT tariffs, there is no time to re-litigate resolved issues. However, in this regard, ICEA and RESA have to point out again one specific issue listed as "resolved" in the ALJPO which is, in fact, not resolved. While the issue of rescission periods is listed as one of the "Resolved Issues", ICEA and RESA are concerned about the ambiguity of Ameren's position which

suggests that Ameren agrees “in principle” with ICEA and RESA regarding customers to whom the rescission period applies, but that it will use the Commission-approved switching rules for non-SVT eligible customers at the time the SVT tariffs are filed. (ALJPO., p. 204) This could actually be a disagreement with ICEA and RESA which assert that the rescission period should only apply to residential and small commercial customers (defined as customers having annual usage of 5,000 therms or less), consistent with the provisions in the Public Utilities Act. The SVT Program is available to non-residential customers larger than small commercial customers, but the same rescission periods should not apply to those larger customers. ICEA and RESA recommend that this ambiguity be clarified during the SVT tariff proceeding.

Third, Ameren seeks clarification that the Utility Consolidated Billing (“UCB”) program, as well as the Purchase of Receivables (“POR”) program is approved. (AIC BOE, p. 33) ICEA and RESA agree that the UCB program and POR program have to work together and recommend that Ameren’s proposed language be adopted.

Fourth, Ameren seeks clarification that its Rider GSIC is adopted. (*Id.*, pp. 33-34). ICEA and RESA agree with Ameren’s proposed language to accomplish this.

#### **IV. RESPONSE TO COMMISSION STAFF**

Staff does not except to the ALJPO’s approval of the Ameren SVT Program. In addition to a technical correction, Staff requests two modifications to the ALJPO.

First, Staff recommends that the ALJPO be modified to reverse the ALJPO’s acceptance of Ameren’s position regarding reconciliation language in Ameren’s Rider PGA. (Staff BOE, p. 49) ICEA and RESA have no position regarding this matter.

Second, like ICEA and RESA (ICEA/RESA BOE, pp. 3-4), Staff proposes to modify the ALJPO to add language regarding the framework of the SVT tariff proceeding. (Staff BOE, pp. 49-50) ICEA and RESA agree, in concept with Staff on this issue, but still prefer the language that they propose in Section II, *supra*.

## **V. RESPONSE TO CITIZENS UTILITY BOARD**

### **A. Benefits of SVT Program**

CUB's Brief on Exceptions is somewhat confusing. Although in its narrative discussion of the SVT Program CUB appears to take the position that the Commission should not approve the program (CUB BOE, pp. 18-21), in its proposed modifications to the ALJPO, CUB leaves intact the ALJPO's language approving the SVT Program. (*Id.*, pp. 24-25) Instead, CUB recommends that the Commission reverse the ALJPO's rejection of the consumer protections proposed by CUB's witness in his rebuttal testimony. (*Id.*, pp. 21-27)

While it appears that CUB has conceded approval of the SVT Program by not excepting to the ALJPO on that issue, ICEA and RESA will respond briefly to CUB's suggestion that the parties supporting the SVT Program did not demonstrate the benefits of that program. Contrary to CUB's suggestion, the record is full of evidence regarding the benefits of SVT Programs, as recited in detail in the ALJPO, including the discussion of RGS' evidence at pages 222-228 and ICEA/RESA's evidence at pages 229-236.

Contrary to CUB's claim that there was no evidence with respect to the experience with SVT Programs in the service territories of Northern Illinois Gas Company ("Nicor Gas"), The Peoples Gas Light and Coke Company ("Peoples Gas"), and North Shore Gas Company ("North Shore") (CUB BOE, p. 20), ICEA/RESA witness

Mr. Kevin Wright testified that based on calendar year 2011 data, Nicor Gas had approximately 203,760 residential and 32,700 non-residential customers in its Customer Select Program, Peoples Gas had approximately 67,900 residential customers and 10,500 non-residential customers in its Choices for You Program and North Shore had approximately 13,500 residential customers and 1,200 non-residential customers in its Choices for You Program. (ICEA/RESA Ex. 1.0, p. 9) Clearly, this level of participation demonstrates that customers are having a positive experience with SVT Programs in the northern part of Illinois. In addition, the extremely minimal number of informal complaints to CUB associated with those programs, discussed *infra*, demonstrates a high level of satisfaction by participating customers.

In response to CUB's reference to the "significant \$2.12 million annual revenue requirement" associated with the implementation of the SVT Program (CUB BOE, p. 20), ICEA and RESA point to the testimony of their witness Mr. Stephen Puican who calculated the annual cost of the SVT Program, on a per therm basis, as \$0.00292 per therm. (ICEA/RESA Ex. 4.0, p. 9) In contrast, he compared the historical differences between the NYMEX natural gas settlement price and Ohio's Gas Cost Recovery rate (Ohio's equivalent to the PGA) and the difference between the NYMEX and the current auction based Retail Price Adjustments for three Ohio utilities, expressed in dollars per therm to be \$0.1845 for Dominion East Ohio, \$0.1272 for Vectren Energy Delivery of Ohio, and \$0.1718 for Columbia Gas Ohio. Mr. Puican concluded that comparing those historical differences with the \$0.00292 per therm incremental costs of the SVT Program demonstrates a significant likelihood that the benefits of the SVT Program will exceed the costs. (*Id.*, p. 10)

In conclusion, the overwhelming weight of the evidence in the proceeding demonstrates that Ameren's residential and small commercial customers will benefit from a well-designed SVT Program. Consequently, the ALJPO was correct in approving the SVT Program.

### **B. CUB's Proposed Consumer Protections**

With respect to CUB's proposal that to address the problems seen in other Illinois retail gas marketing programs, three specific consumer protections should be ordered by the Commission if it decides to go forward with implementation of an SVT Program for Ameren (CUB In. Br., pp. 39-41) , the ALJPO was correct in rejecting that proposal:

Having reviewed the positions of the parties, the Commission find that the record does not indicate why customers would be inadequately protected unless the statutory protections referenced by ICEA/RESA and RGS are supplemented by the three measures proposed by CUB. With respect to CUB's argument that neither ICEA/RESA nor RGS provided evidence demonstrating that these proposals would be overly burdensome, too costly, difficult to implement or ineffective the Commission observes that the three consumer protection measures identified above first appeared in CUB's rebuttal testimony; therefore, ICEA/RESA and RGS did not have an opportunity to file such evidence. In any event, the Commission finds that the three measures at issue are not supported by the record and will not be adopted at this time. Whether or to what extent they could be addressed in an SVT tariff proceeding is an issue not addressed in this Order.

(ALJPO, pp. 237-238) While the ALJPO correctly disposes of CUB's proposal for additional consumer protections beyond the extensive consumer protections contained in Section 19-115 of the Public Utilities Act, ICEA and RESA feel the need to respond to two of CUB's arguments.

First, CUB continues to advance the argument that its proposed consumer protections are needed to "address the well-documented problems of misleading marketing seen in Northern Illinois gas choice programs". (CUB BOE, p. 22) However,



these problems, which were described in CUB's direct testimony, are stale and predate the consumer protections added to the Public Utilities Act after the Commission proceedings mentioned in that direct testimony. In fact, the most recent statistics available, from CUB itself, do not demonstrate the need for CUB's proposals. During calendar year 2013—through August 19, 2013—CUB received the following total number of inquiries and complaints against all alternative gas suppliers: 20 relating to Nicor Gas' Customer Select Program, 16 relating to The Peoples Gas Light and Coke Company's Choices for You Program, and 0 relating to North Shore Gas Company's Choices for You Program. (RESA Ex. 7.0, last page) To put these numbers in perspective, there were a total of 26 complaints and inquiries to CUB, compared to a total of approximately 320,000 residential and small commercial customers participating in Choice Programs for these three gas utilities. (ICEA/RESA Ex. 1.0, p. 9) Thus, CUB's proposals appear to be a solution in search of a problem and were correctly rejected by the ALJPO.

Second, standing logic on its head, CUB claims that its proposed consumer protections, mentioned for the first time in its rebuttal testimony, weren't untimely; rather ICEA/RESA's and RGS' objections to the proposal were untimely. While chiding ICEA, RESA and RGS for not conducting discovery, cross-examining CUB's witness, nor moving to strike his testimony regarding the proposed consumer protections in the 19 day period from the service of CUB's rebuttal testimony to the start of evidentiary hearings, CUB neglects to mention that it had over a year to propose such protections. Initially, they should have been brought up during the SVT Program workshops that were held after the Commission's Order in Docket 12-0282. In fact, the first item of the Staff's

agenda for the first workshop was: “What consumer protections are needed?”. (RESA Ex. 3.0, p. 7) Obviously, CUB could have proposed consumer protections in its direct testimony in this proceeding, as well. At any rate, the ALJPO was correct in rejecting CUB’s consumer protections on both procedural, as well as substantive grounds.

### **C. Participation in Workshops**

Finally, ICEA and RESA want to respond to CUB’s proposal to remove from the ALJPO the paragraph in which CUB’s lack of participation is discussed. (CUB BOE, p. 24):

The Commission appreciates the frustration expressed by ICEA/RESA and RGS over CUB’s choice not [to] participate more fully in the workshop[s] conducted pursuant to the order in Docket No. 11-0282. The Commission believes participation by CUB on consumer protection and other issues would have been beneficial to the process. From a legal standpoint, however, CUB’s failure to do so does not constitute a waiver or forfeiture by CUB of an opportunity available to other parties in this proceeding to address SVT issues.

(ALJPO, p. 237) If anything, the ALJPO’s discussion on this issue is charitable to CUB. While CUB claims that the discussions at the first SVT workshop were limited to customer information (CUB BOE, p. 24), the first item on the Staff’s agenda for the first workshop was: “What consumer protections are needed?”. (RESA Ex. 3.0, p. 7) Moreover, the record shows that the only representative of CUB at the workshops was one of CUB’s attorneys who called into two of the four workshops but is not certain about the other two workshops, nor about the four SVT webinars conducted by AIC in August and September 2012. (RESA Ex. 3.0, p. 8) Consequently, CUB is not in a position to know what was or was not discussed at the workshops. RGS’ witness Mr. James Crist participated in the workshops and testified, at length, about CUB’s lack of participation in the workshops. He testified that consumer protection issues were

discussed several times during the workshops. (RGS Ex. 2.0, pp. 1-5) Accordingly, the Commission should reject CUB's proposal to delete the above-quoted paragraph from the ALJPO.

## **VI. CONCLUSION**

In conclusion, the Commission, in its final order in this proceeding, should approve the ALJPO's implementation of an SVT Program in Ameren's service territory, subject to the modifications proposed by ICEA and RESA in their Brief on Exceptions and in this Reply to Briefs on Exceptions. CUB's proposed consumer protections should be rejected for the reasons set forth in the ALJPO.

Respectfully submitted,  
Illinois Competitive Energy Association  
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**By: /s/GERARD T. FOX**  
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### **NOTICE OF FILING**

Please take note that on November 27, 2013, I caused to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission, the attached Reply to Briefs on Exceptions of the Illinois Competitive Energy Association and the Retail Energy Supply Association in this proceeding.

Dated: November 27, 2013

/s/GERARD T. FOX

Gerard T. Fox

### **CERTIFICATE OF SERVICE**

I, Gerard T. Fox, certify that I caused to be served copies of the foregoing Reply to Briefs on Exceptions of the Illinois Competitive Energy Association and the Retail Energy Supply Association upon the parties on the service list maintained on the Illinois Commerce Commission's eDocket system for Ill. C. C. Docket 13-0192 via electronic delivery on November 27, 2013.

/s/ GERARD T. FOX

Gerard T. Fox